IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.5230 of 2006
Date of Decision : September 29, 2006.

Prahlad Kumar ..... Petitioner

Vs.

Harbhagwan Mehta and others ..... Respondents

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.Arvind Rajotia, Advocate
for the petitioner.

* * *

P.S.Patwalia, J. (Oral) :

The present revision petition has been filed by the plaintiff aggrieved against the order of the trial court dated 26.5.2004 dismissing an application under Order 39 Rules 1 and 2 filed by him as also the order dated 6.6.2006 passed by the learned Additional District Judge, Hisar dismissing first appeal filed by the plaintiff. The learned Additional District Judge while dismissing the appeal has however made the following observations :-

"The defendant no.2 having purchased the suit property is a lawful owner and no injunction

can be issued against him. However if the plaintiff ultimately succeeds in his suit, he would certainly be entitled to all rights available to him under the law including possession of the suit property from the defendant No.2. Therefore, any construction that may be raised by the defendant no.2 over the suit property would be subject to final decision of the suit. The defendant No.2 would be at liberty to remove the construction/debris at his own risk and responsibility within a reasonable time, failing which the plaintiff would be entitled to take possession of the plot along with the structure thereon without paying any compensation therefore."

The facts as emerged from the orders made by the courts below are that the plaintiff had filed the suit initially for a permanent injunction seeking relief that the defendants be restrained from taking possession of the plot in question or to change the ownership of the said plot in favour of any person. He claimed to have purchased the plot from defendant no.1 who was the General Power of Attorney holder of defendant no.4 who was the owner of the plot. He had based his claim on an agreement to sell dated 9.10.1991 entered into between the plaintiff and defendant no.4 for a total consideration of Rs.4.25 lacs out of which, according to the plaintiff, a sum of Rs.4 lacs had been paid.

However after the defendants no.2 to 4 filed written statement in the suit, the plaintiff amended his suit to the effect that after entering into

agreement to sell with the plaintiff the owner of the house had no right to execute sale deed of the said house in favour of defendant no.2.

While defendant no.1 filed a written statement admitting the claim, defendants no.2 to 4 filed separate written statements also contesting the suit. It was the stand of these defendants that defendant no.4 was the original owner of the plot which was located in D.C.Colony Hisar and was part of the Hisar Co-operative House Building Society Limited, Hisar which was arrayed as defendant no.3 in the suit. Defendant no.2 had submitted that the plot in question was transferred in his name vide transfer certificate issued on 17.3.1999 by defendant no.3 society. He further stated that in pursuance to the aforementioned certificate a sale deed had been executed in his favour which was registered on 22.3.1999 and all this had happened prior to the filing of the suit. He alleged that the plaintiff was guilty of concealment of facts. The society also stated that defendant no.4 was the owner in possession of the plot in dispute and subsequently transferred the same to defendant no.2 vide affidavit dated 25.2.1999 and in pursuance to the said affidavit the ownership of the plot was transferred to defendant no.2 in the records of the society. Defendant no.4 the real owner took the stand that defendant no.1 is married to the real sister of the plaintiff and as such is his brother-in-law. It is only to cause loss to him that they have concocted the pleadings in the suit and manipulated the documents. He stated that he had already directed defendant no.1 not to act as his attorney and had intimated him vide letters dated 29.7.1998, 8.11.1998 and 23.11.1998 and as such the Power of Attorney had been cancelled. It has also come on the record in the written statement of defendant no.3 society that defendant no.4 had intimated the society on 29.7.1998 itself that he had

lost faith in defendant no.1 and as such his share in the society and plot in dispute should not be dealt with in his absence or without his personal consent.

On the basis of the aforementioned facts the trial court came to the following conclusion :-

> ***"21.*** *A perusal of the file would show that the prayer sought by the applicant-plaintiff is very vague in nature. The contents of the pleadings reveals that plaintiff prayed for possession of the suit property, by way of specific performance in respect of plot in question and in case the defendants succeed in taking possession then possession be delivered to him and he be also declared to get his name entered as owner in the record of defendant No.3. He also alleged that sale dated 22.3.1999 in favour of defendant No.2 in collusion with defendants No.1, 3 and 4 has no effect upon his rights and as such liable to be set aside.*
>
> ***22.*** *In view of the pleas raised by plaintiff, who based his claim, on an agreement to sell dated 9.10.1988 coupled with the documents and stand taken by defendants, prima-facie there is nothing on the record to show that the plaintiff is in possession of the suit property, in any capacity.*
>
> ***23.*** *Defendant No.1 Harbhagwan Mehta*

being the alleged power of attorney holder though admitted the claim of the plaintiff, however, all the pleadings of the plaintiff have been specifically controverted by the other defendants. Defendant No.4 Satyapal son of Veerbhan admittedly original owner of the plot in question who has allegedly executed power of attorney in favour of defendant No.1 has specifically stated that he never authorized the defendant No.1 to sell or make an agreement to sell the property in question. He emphasized that knowing about the conduct and personality of defendant No.1, after written various letters revoked the general power of attorney. He specifically denied the fact that possession of the suit property was with the plaintiff at any point of time. Rather it is an admitted position that sale deed has been effected in favour of defendant No.2 at the instance of defendant No.3 society, on the basis of affidavit dated 25.2.1999 of original owner (defendant No.2) while he transferred his share/plot in question in favour of defendant No.2 which was further transferred to defendant No.2 in the records of plaintiff society vide certificate dated 17.3.1999. There is also no dispute to the effect that the plaintiff and defendant no.1 are close

relatives.

24. *Sale deed dated 22.3.1999 registered No.6331 and allotment certificate would show the ownership and possessory rights of defendant No.2 over the plot in question.***"**

On the basis of the aforesaid conclusion the trial court declined the relief of temporary injunction to the plaintiff. The trial court also noted that in the original plaint the plaintiff had not stated complete facts which were very much within his knowledge. The relevant observations of the trial court to this effect are as hereunder :-

"*It is also pertinent to mention here that on the date of filing of the suit, also the position was same, as prior to 6.4.1999, sale deed dated 22.3.1999 in favour of suit was also bad. In view of the circumstances of the present case including the stand of defendants, plaintiff at latter stage, filed the application seeking the amendment of plaint. It is not the case, where the plaintiff was allowed to amend his claim because of change of circumstances, during the pendency of the case, but, in the present facts, the defendants, from the very beginning took the stand that sale deed has been effected in favour of defendant No.2 vide registered No.6331 dated 22.3.1999 which was very much within the knowledge of plaintiff.***"**

The aforementioned findings of fact have been affirmed by the

lower appellate court subject to observations reproduced in the opening part of this order.

Learned counsel for the petitioner has contended that all the ingredients for grant of temporary injunction were made out in the present case. He has relied upon a judgment of Hon'ble Supreme Court in the case of ***Maharwal Khewaji Trust (Regd.), Faridkot vs. Baldev Dass*** reported as ***AIR 2005 SC 104*** and a judgment of this Court in the case of ***Smt.Nirmal vs. Lakhpat Singh*** reported as ***2001(3) PLR 556***. He has argued that defendant no.2 should not be permitted to alter the nature of the property in any manner.

After hearing learned counsel for the petitioner and going through the pleadings I do not find any ground to interfere in the orders made by the courts below declining the relief of temporary injunction to the petitioner. There is sufficient prima facie material on the record to show that defendant no.4 had legally sold the plot to defendant no.2 and the sale transaction was also recorded in the records of defendant no.3 society. On the other hand the plaintiff is relying on an agreement to sell entered into with the Power of Attorney who is none other than his own brother-in-law. Defendant no.4 the owner of the plot has written various letters to the Power of Attorney as also to the Society expressing no confidence in defendant no.1 as his Power of Attorney. The first of these letters is dated 29.7.1998 and the letter written to the Society is also dated 29.7.1998 which are before 9.10.1998 the date when the agreement to sell was allegedly entered into between the plaintiff and defendant no.1.

In view of the aforementioned facts I find no prima facie case or balance of convenience in favour of the petitioner for the grant of

temporary injunction.

For the reasons aforementioned I find no merit in this revision petition and the same is accordingly dismissed in limine. I may however notice that any observation made herein above is only for the purpose of deciding the grant of temporary injunction and would not have any bearing on the final decision of the case.

September 29, 2006 (P.S.Patwalia)
monika Judge